

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	4:11CR3132
	)	
v.	)	
	)	
JOHN W. CHARLES,	)	MEMORANDUM AND ORDER
	)	
Defendant.	)	
_____	)	

This is a child pornography possession case as opposed to a receipt or distribution case. As these things go, the stash of child pornography, while vile, was not particularly extensive. The defendant is a gay man who may be unusually susceptible to abuse in prison. He seems to have made fairly dramatic progress since he was indicted. He strikes me as genuinely sincere and remorseful with a greater than usual insight into the harm his criminal conduct has caused.

On August 14, 2012, I conducted a sentencing hearing after earlier denying a motion for continuance. I accepted the plea agreement. I denied a claim for restitution because only one image was found regarding the victim who sought restitution, the defendant is not likely to have intentionally accessed the image for prurient purposes given his sexual orientation, and, in any event, proximate cause was not shown. I also ruled on the defendant's variance motion indicating that I would probably not impose a probationary sentence, but I would vary downward to account for my concern about sentencing disparity in this district. I then heard the allocution of counsel and the defendant. At that point, the statements of the lawyers and the defendant, in particular, gave me pause.<sup>1</sup>

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<sup>1</sup>To be candid, my intuition, and nothing more, told me to go slow as the defendant might be that very unusual offender for which an unusual sentence might

Upon reflection, I decided that I had erred in failing to grant the defendant's motion for continuance to allow him to participate in a sex offender specific treatment program that could last as long as 12 to 18 months. After making substantial progress on pretrial release, the defendant had started that program about a week ago. It is possible, although by no means certain, that the defendant's successful completion of the sex offender specific treatment program coupled with the information in the presentence report and the evidence submitted by the defendant in support of the motion for variance (filing no. 48) might cause me to impose a reduced sentence greater in degree than I had originally contemplated. In essence, I wanted the information that might be derived from the defendant's participation in the program in order to make an informed sentencing decision. Therefore, on my own motion I continued sentencing.

IT IS ORDERED that:

1. Sentencing is continued until further order of the court with the understanding that I may set another sentencing date at any time whether or not the defendant has completed the program.
2. The defendant is ordered to participate in and successfully complete the sex offender specific treatment program offered through Counseling Affiliates and to abide by all the rules and regulations of that program.
3. Defense counsel shall prepare and submit to the prosecutor, the probation officer, the pretrial services officer and myself a detailed report of the defendant's progress in the sex offender specific treatment program on October 15, 2012, and every sixty days thereafter. The report shall be filed in the court file as a restricted document.

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be warranted.

4. My chambers shall provided me with a copy of the report of the defendant's progress each time such a report is submitted by defense counsel.
5. The defendant is also ordered to continue to follow the order setting conditions of release in this case.
6. The probation officer and the pretrial services officer shall monitor the defendant and advise me if and when they have any concerns about the defendant's progress or otherwise. In any event, those officers shall advise me when they believe I should set a new sentencing date.
7. The Clerk shall provide a copy of this Memorandum and Order to counsel, Magistrate Judge Zwart, Pretrial Services Officer Mindy Bare, and U.S. Probation Officer Sandra Otto.

DATED this 15<sup>th</sup> day of August, 2012.

BY THE COURT:

*Richard G. Kopf*  
Senior United States District Judge